IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

FRIDAY, THE 7TH DECEMBER 2007 / 16TH AGRAHAYANA 1929

WP(C).No. 36214 of 2007(J)

AGAINST THE ORDER IN IN EP 1199/2006 IN OS.3305/2004 of III ADDL. M.C.,THRISSUR

.....

PETITIONER:

---

1. T.D. FRANCIS, AGED 39, S/O. THANIKKAL
   ALUKAL DEVASSY, PONALLUR DESOM, KARAMUKU VILLAGE
   KANDASSAMKADAVU P.O., THRISSUR TALUK.

2. T.K.INASU, AGED 45, S/O.THANIKKAL
   ALUKAL KUNJIPORINCHU,PONALLUR DESOM,
   KARAMUKU VILLAGE KANDASSAMKADAVU P.O.,
   THRISSUR TALUK.

3. T.D. JOJU, AGED 27,S/O.THANIKKAL
   ALUKAL DEVASSY,PONALLUR DESOM,
   KARAMUKU VILLAGE KANDASSAMKADAVU P.O.,
   THRISSUR TALUK.

BY ADV. SRI.G.SREEKUMAR (CHELUR)

RESPONDENTS:

THE NEW TRICHUR COMPANY (P) LTD
HAVING REGISTERED OFFICE AT
KANDASSAMKADAVU DESOM, P.O.KANDASSAMKADAVU,
THRISSUR DISTRICT.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 07/12/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.N.KRISHNAN, J

==========

W.P.(C) No.36214 OF 2007

==========

Dated this the 7th day of December 2007

JUDGMENT

This writ petition is preferred against the order of the III Addl.Munsiff's Court, Thrissur in E.A.No.1065 of 2007 in E.P.No.1199 of 2006 in O.S.No.3305 of 2004. The decree holder moved an application requesting the court to direct the judgment debtors to furnish details as contemplated under Order 21 Rule 41(2) of the C.P.C. Judgment debtors requested the court for giving some time for filing affidavit. The court below rejected the prayer and immediately thereafter ordered arrest. I am afraid the procedure adopted by the court below is incorrect. The court should have given breathing time to the judgment debtors to file an affidavit, which will go a long way in resolving the matter. Further, it is always the preliminary duty of the decree holder to establish before the court regarding the means of the judgment debtors.

Therefore, the order under challenge suffers from serious infirmity and therefore it is set aside. The court below is directed to restore E.A.No.1065/2007 and permit the judgment debtors to file an affidavit as

requested by them and thereafter permit both sides to adduce evidence in support of their contentions. Till such decision is taken, they shall not be arrested and detained in civil prison. Since the case is disposed of at the admission stage itself, the court below is directed to issue notice to the decree holder, fix a date for enquiry and then dispose of the matter in accordance with law.

Writ petition is disposed of as above.

M.N.KRISHNAN, JUDGE

Cdp/-